

CRUZ M. CHAVES

IBLA 82-1096

Decided September 27, 1982

Appeal from decision of Arizona State Office, Bureau of Land Management declaring unpatented mining claims abandoned and void. A MC 44052 through A MC 44054.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1 the owner of a mining claim located prior to Oct. 21, 1976, must file evidence of assessment work or a notice of intention to hold the claim in the proper office of the Bureau of Land Management on or before Oct. 22, 1979. Failure to comply with this recordation requirement is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: S. E. Theiss, lessee, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

S. E. Theiss, lessee, appeals the July 1, 1982, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring the unpatented Pay Dirt Nos. 1, 3, and 4 lode mining claims, A MC 44052 through A MC 44054, abandoned and void because no evidence of assessment work was filed with BLM prior to October 22, 1979, or at any time in 1979, in violation of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The claims had been located originally in 1953, 1956, and 1963. Amended notices of location were recorded in Yavapai County, Arizona, in May 1979, and with BLM on June 11, 1979. The amended notices stated they were intended to

make the description more definite. Proofs of labor were filed for the claims in 1980 and 1981.

Appellant asserts the claims have been held and worked by Cruz M. Chaves since the early 1950's. The claims have been mined continuously and there is a 100-ton mill on the Pay Dirt No. 1 claim. Assessment work has been performed each year and recorded in Yavapai County. Appellant entered into a lease of the claims in 1978 and assumed his attorney had filed all necessary papers with BLM.

[1] The owner of an unpatented mining claim located prior to October 21, 1976, had until October 22, 1979, to record the location notice with BLM and to provide certain ancillary information, including evidence of assessment work or a notice of intention to hold the claim. Section 314, FLPMA. Recordation of the assessment work is effected only by filing of the appropriate instrument in the proper BLM office within the time periods prescribed by the statute. Failure to comply with the statute and the implementing regulations requiring recordation of information relating to unpatented mining claims on public land must result in a conclusive finding that the claim has been abandoned and that it is void. Paul Lambrix, 63 IBLA 170 (1982), Modoc Gem & Mineral Society, 58 IBLA 142 (1981). This Board has no authority to waive the statutory and regulatory requirements or to afford any relief from the statutory consequences of failure to comply. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to consult with BLM as to the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Will A. Irwin
Administrative Judge

